

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

GARY ORAM, JR.,

Plaintiff,

vs.

THE DILLON CITY POLICE
DEPARTMENT, CETH HAGGARD,
JEREMY ALVAREZ, JACOB
JOHNSON,

Defendants.

CV-15-47-BU-BMM-JCL

ORDER

By Order entered May 9, 2016, the Court granted Defendants Ceth Haggard, Jeremy Alvarez, and the City of Dillon's ("Defendants") motion to compel discovery and for sanctions pursuant to Federal Rule of Civil Procedure 37. The Court also awarded Defendants the reasonable attorney fees and costs they incurred as a result of pro se Plaintiff Gary Oram's failure to appear for his deposition. On May 12 and 13, 2016, Defendants submitted their applications for attorneys fees and costs in response to the referenced Order.

Oram did not file a brief in opposition to Defendants' requests for attorneys fees and costs. Pursuant to L.R. 7.1(d)(1)(B)(ii), Oram's failure to file an opposing brief is deemed an admission by him that Defendants' applications for

attorneys fees and costs are well-taken.¹

Having reviewed the applications, the Court deems it appropriate to reduce both applications with respect to the 1.2 hours requested for waiting for Oram to appear to .5 hours. As to Defendants Haggard and Alvarez, their application is also reduced with respect to the hourly rate claimed for their counsel's travel time to and from the deposition from \$190 per hour to \$75 per hour.

Therefore, pursuant to Fed. R. Civ. P. 37(a)(5)(A), IT IS HEREBY ORDERED Defendants' applications for attorneys fees and costs are GRANTED, but as reasonably modified as follows:

Defendant City of Dillon:

Attorneys Fees:

4/19/2016	Attend and wait for Plaintiff to participate in his deposition	.5 hours @ \$165/hr.	<u>\$82.50</u>
Total Attorneys Fees:			\$82.50

¹It is noted that Oram filed a notice appealing the May 9, 2016 Order. But an order imposing sanctions pursuant to Fed. R. Civ. P. 37 is not a "final decision" under 28 U.S.C. § 1291. *Cato v. Fresno City*, 220 F.3d 1073, 1074 (9th Cir. 2000) (per curiam). Thus, the Court is not divested of jurisdiction to proceed with this case.

Defendants Haggard and Alvarez:

Attorneys Fees:

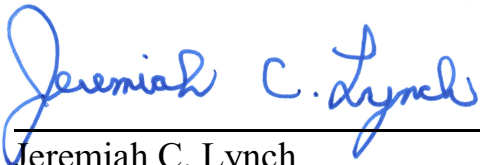
4/19/2016	Travel from Butte to Missoula	1.5 hours @ \$75/hr.	\$112.50
4/19/2016	Attend and wait for Plaintiff to participate in his deposition	.5 hours @ \$190/hr.	\$95
4/19/2016	Return travel from Missoula to Butte	1.5 hours @ \$75/hr.	<u>\$112.50</u>
Total Attorneys Fees:			\$320.00

Costs/Expenses:

4/19/2016	Enterprise Rental Car	\$67.58
4/19/2016	Exxon - fuel for rental car	\$22.17
4/19/2016	Sullivan Court Reporting	\$50.00
4/19/2016	Irish Luck Productions	<u>\$200.00</u>
Total Costs/Expenses:		<u>\$339.75</u>
Total Attorneys Fees, Costs/Expenses:		\$659.75

IT IS FURTHER ORDERED that this award of sanctions will be included in the final judgment once it is entered in this case upon final disposition of all claims and defenses.

DATED this 8th day of June, 2016.


Jeremiah C. Lynch
United States Magistrate Judge